

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.9 of 2011
and
M.P.No.1 of 2011

Branch Manager,
The New India Assurance Co. Ltd.,
No.163, M.G.Puram,
Perambalur - 621 212. Appellant

... Vs ...

1. Karikalan
2. Mani @ Tamilmani
3. Subramanian
4. Minor Sakthivel
(Minor rep. by his guardian & father Karikalan
5. M.Senthilkumar Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.07.2010 made in M.C.O.P.No.97 of 2008 on the file of the Motor Accidents Claims Tribunal (Sub Court), Perambalur.

For Appellant : Mr.S.Dineshkumar
for Mr.S.Jayasankar

For RR-1, 2 and 4 : Mr.G.Perumal

For R-3 : No Appearance

For R-5 : Mr.R.Balasubramanian

JUDGMENT

The Insurance Company has filed this civil miscellaneous appeal challenging the Judgment and decree dated 22.07.2010 passed by the Motor Accidents Claims Tribunal (Sub Court), Perambalur, in M.C.O.P.No.97 of 2008.

2. Respondents 1 to 4 herein are the legal representatives of the deceased Kathiresan. The fifth respondent herein is the owner of the Tractor-cum-Trailer.

3. The respondents 1 to 4 herein have filed a claim petition alleging that on 11.08.2007, the deceased Kathiresan and one Sankar have gone for cutting sugarcane in Nochikuppam Village and after completing the work, the land owner requested the deceased Kathiresan and Sankar to accompany sugarcane from Nochikuppam village to Andakudi Sugar Factory and hence, the deceased accompanied the goods in a Tractor bearing Registration No.TN-46-D-4221 and the Trailer bearing Registration No.TN-49-W-5967. While the deceased Kathiresan and Sankar were accompanying the sugarcane in the tractor and trailer, the driver was driving the tractor in a rash and negligent manner in Ariyalur to Tanjore main road from North to South direction. At about 11.30 p.m., when the tractor was nearing the other neighbours, the injured Kathiresan was taken to TMCH Thanjavur for treatment where the injured Kathiresan died on the way succumbed to injuries.

4. Learned counsel appearing for the fifth respondent/owner of the Tractor would contend that at the time of the accident, the driver of the Tractor is having valid license and it is duly insured with the insurance company.

5. The appellant-Insurance Company has filed counter statement alleging that there is a violation of policy condition and also stated that the driver of the vehicle does not possess any valid license to drive the Tractor.

6. Taking into consideration the oral evidence of P.W.2 coupled with Ex.P.1-FIR, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the fifth respondent's vehicle and the same is hereby confirmed.

7. On the point of quantum, taking into consideration the age of the deceased, the Tribunal has fixed the notional income of the deceased at Rs.3,000/- per month and arrived at compensation. After going through the compensation awarded by the Tribunal under various heads, I am of the considered view that the same cannot be said to be excessive and hence, the quantum of compensation awarded by the Tribunal is also confirmed.

8. On the point as to whether the appellant-Insurance Company is liable to pay compensation on the ground of alleged violation of the insurance policy, on behalf of the claim petitioners, Ex.P.4-insurance policy has been marked. On behalf of the insurance company, R.W.1 was examined and Ex.R.4-insurance for the Tractor and Trailer has been marked under the category of special type of policy and comprehensive policy.

9. According to the claimants, the deceased traveled in the Tractor as a owner occupying the goods to the sugar factory. In the absence of any positive evidence, the Tribunal has accepted the same. Taking note of the nature of policy being comprehensive policy, the Tribunal has held that the insurance company is liable to pay compensation. Furthermore, taking note of the fact that the driver is having valid license to drive the light motor vehicle and also taking note of the decision of the Hon'ble Supreme Court, badge endorsement is not required in respect of the vehicle having the weight below the prescribed load, the Tribunal has rightly come to the conclusion that the driver of the fifth respondent is having valid license and taking note of the nature of the policy, the Tribunal has held that the insurance company is jointly and severally liable to pay compensation and such finding does not require any interference by this Court.

10. In this view of the matter, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Sub Court,
Motor Accidents Claims Tribunal,
Perambalur.
2. The Section Officer,
V.R. Section, High Court,
Madras.

+1 cc to M/s.R.Balasubramanian, Advocate, S.R.No.18061

+1 cc to M/s.S.Jayasankar, Advocate, S.R.No.18545

C.M.A.No.9 of 2011

RR(CO)
SSM(04/09/2019)